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SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-825

SYLVESTER J. CAMPBELL, *Petitioner*

v.

HONORABLE MILTON J. SHAPP, Governor of Pennsylvania, and KENNETH G. BIEHN, District Attorney of Bucks County and Sheriff of Bucks County, *Respondents*

Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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STATEMENT OF THE CASE

The State of New Jersey is seeking the extradition of the petitioner pursuant to the provisions of the Uniform Extradition Act, the Act of July 8, 1941, P.L. 288, Section 1, et seq., 19 P.S. §191.1, et seq. The Governor of Pennsylvania has issued a warrant for the arrest as required by Section 7 of the Act following his receipt of the demand from the Governor of New Jersey. It was duly executed and sealed by the State of New Jersey as required by Section 3 of the Act. The petitioner petitioned the Court of Common Pleas of Bucks County, Commonwealth of Pennsylvania, for a writ of habeas corpus, pursuant to Section 10 of the Act. Several hearings were held before the Honorable Isaac S. Garb pursuant to that petition, and on January 3, 1974, Judge Garb discharged the writ and ordered the extradition of the petitioner to New Jersey. Thereafter, the petitioner filed an appeal to the Superior Court of Pennsylvania, which court, after argument, affirmed the decision of the court below. A petition for allowance of appeal from the Superior Court to the Supreme Court was thereafter filed. The Supreme Court of Pennsylvania denied the petition on August 8, 1974.

Thereafter, the petitioner filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Pennsylvania. On August 18, 1974, in consideration of the petition for a writ of habeas corpus, the respondents were ordered to show cause why the petition should not be granted. A hearing was set for September 6, 1974, before the Honorable Clarence C. Newcomber. Judge Newcomber, after argument by the respective parties, and upon consideration of briefs submitted by the parties, denied the petitioner's writ of habeas corpus on November 22, 1974. Thereafter, the instant appeal to the Third Circuit Court of Appeals followed.

Judge Newcomber neither granted nor denied a certificate of probable cause. Thereafter, Thomas F. Quinn, Clerk

of the United States Court of Appeals, submitted a request for such a certificate on Mr. Campbell's behalf to the Court of Appeals on February 24, 1975. On March 6, 1975, the motion for a certificate of probable cause was denied, and the court noted that a petitioner may be entitled to appeal under 28 U.S.C. §2241 (c) (1). The latter citation was later amended to 28 U.S.C. §2241 (c) (3).

Thereafter, petitioner filed an appeal with the United States Court of Appeals which was argued on September 11, 1975. On the same day, the appeal was denied and the order of the District Court was affirmed.

REASONS FOR DENYING THE WRIT

Initially, the Supreme Court of the United States should deny this instant petition for a writ of certiorari because the Court of Appeals improperly permitted the petitioner's appeal.

Admittedly a federal question is raised. Extradition between states is required by Article 4, Section 2 of the Constitution. Thus, an individual in custody of state officials, as is petitioner, is thereby being held under color of authority derived from the Constitution of the United States and he may test the propriety of his extradition in the federal courts. The federal court review is by habeas corpus. 28 U.S.C. §2241 (c).

The petitioner sought habeas corpus review in the District Court; however, the writ was denied. After the denial of his writ by the District Court, he appealed to the Third Circuit Court of Appeals. The rules are clear, however, that before he could appeal, he should have had a certificate of probable cause. F.R.A.P. 22 provides in relevant part as follows:

> (b) NECESSITY OF CERTIFICATE OF PROBABLE CAUSE FOR APPEAL in a Habeas Corpus proceeding, in which the detention complained of arises out of process issued by State Court, an Appeal by the Applicant for the Writ may not proceed unless a District Court or a Circuit Court issues a Certificate of Probable Cause. . . ."

This rule is based on 28 U.S.C. §2253, which provides that an appeal may not be taken in a habeas corpus proceeding where confinement is under the judgment of a state court unless the judge who rendered the order in the habeas corpus proceeding, or a circuit court judge, issues a certificate of probable cause. While 28 U.S.C. §2253 does not authorize a court of appeals as a court to grant a certificate

of probable cause, *In re Burwell*, 350 U.S. 521 (1956) makes it clear that a court of appeals may not decline to consider a request for a certificate addressed to the court as a whole and must regard the request as made the judges thereof.

Judge Newcomber failed to consider whether a certificate of probable cause should issue; therefore, the Third Circuit considered that issue and denied the certificate. Without the certificate, the Third Circuit Court of Appeals did not have jurisdiction to hear the petitioner's appeal. See *Hooks v. 4th District Court of Appeals* (5th Cir., 1971) 442 F.2d 1042.

The rule is specific: "An appeal by the applicant for a Writ *may not proceed* unless a district court or a circuit court judge issues a certificate of probable cause." No certificate is issued in the instant case, and therefore, the appeal was improvidently granted and this petition for a writ of certiorari from that Order of that Court should be denied.

The remaining reasons for denying the writ are included in the alternative, in the event this Court determines that the matter was properly before the Third Circuit Court of Appeals.

A. When the demanding state has complied with the legal requirements for extradition, the court does not have the power to inquire into the motives of the prosecution or whether the charge is true.

The court of an asylum state will order extradition when the following elements are found to be present:

a. The subject of the extradition is charged with a crime in the demanding state;

b. The subject of the extradition is a fugitive from the demanding state;

c. The subject of the extradition was present in the demanding state at the time of the commission of the crime; and

d. the Requisition papers are in order.

Ripepi Extradition Case, 427 Pa. 507 (1967); *Commonwealth ex rel. Banks v. Hendrick*, 430 Pa. 575 (1968); and *Commonwealth ex rel. Coades v. Gable*, 437 Pa. 553 (1970).

The extradition warrant is *prima facie* evidence of the existence of every fact which the executive authority was obliged to determine before issuing it. The burden was upon the petitioner to come forward with evidence to overcome the *prima facie* case of the validity of the warrant upon its introduction. *Taylor v. Superintendent, Philadelphia County Prison*, 382 Pa. 181 (1955). The signed and sealed demand of the Governor of New Jersey, together with a certified copy of the indictment and a signed and sealed warrant for the petitioner's request signed by the Governor of Pennsylvania, were offered into evidence and were received without objection. The demand from the Governor from the State of New Jersey recites that the petitioner was present in the state of New Jersey at the time of the commission of the alleged crime, since the petitioner offered no evidence to overcome the allegation, it must stand. Furthermore, the evidence presented at the hearing on this extradition supported these facts.

The petitioner in both the state court and the district court made a number of unsubstantiated allegations that New Jersey was attempting to extradite the petitioner for an improper purpose, *i.e.* to coerce him into being a witness before the Grand Jury.

However, the very cases cited by the petitioner in his brief established that he may not question the motives for the prosecution until he arrives in New Jersey. For example, in *Commonwealth ex rel. Spivack v. Heinz*, 141 Pa. Super. 158, 14 A.2d 875 (1940) the court held:

> "In approaching a discussion of the question before us, we recognize that it is the duty of the Commonwealth to aid in the punishment of crime committed in another state by the prompt extradition of a fugitive of justice found within its jurisdiction. If the demanding state has complied with the legal requirements, neither our Governor nor this court has the power to inquire into the motives of the prosecution or whether the charge is true."

Petitioner has been properly charged with a crime and indicted in the state of New Jersey. He is, therefore, a fugitive from the demanding state and as will be argued below, he was present in the demanding state at the time of extradition. And since the requisition papers are in order, the petitioner must be extradited.

B. The petitioner was not entitled to a hearing in the federal court on his request for a petition for habeas corpus after he had a full and adequate hearing before the state court.

The petitioner in the court below contended that he was entitled to a hearing before the District Court to review the State's denial of his petition for a writ of habeas corpus. The Commonwealth contended on the other hand, that the federal court is limited to reviewing the state record to determine whether on the face of the record the court's order for extradition was justified. The Commonwealth contended further that the state court's order of extradition should be reversed only if the federal court were to conclude that there had been an abuse of discretion by the state court.

The Commonwealth does not disagree that the petitioner must be given due process of law when he is extradited. In the instant case, he has had a full hearing and the order of the trial court has been reviewed by the appellate courts of the state and affirmed. As such petitioner has

certainly been given due process of law. The Commonwealth asserts that for the reasons set out below, due process did not require another hearing before the federal courts and that, therefore, no probable cause for another hearing exists.

The federal courts have frequently had to decide the issue of when the appellant who is challenging a state extradition order will be permitted to offer evidence before the federal court. See *Smith v. Idaho*, 373 F.2d (1967); *Townsend v. Sain*, 372 U.S. 293, 9 L. Ed. 2d 770 (1963). *Townsend* sets forth six circumstances where the federal court should grant an evidentiary hearing to a habeas corpus applicant:

> "If (1) the merits of the factual dispute were not resolved in the State Hearing; (2) the State factual determination is not fairly supported by the record as a whole; (3) the fact finding procedure employed by the State Court was not adequate to afford a full and thorough hearing; (4) there is a substantial allegation of newly discovered evidence; (5) material facts were not adequately developed at the State Court hearing; or (6) for any reason it appears that the State trier of fact did not afford the Habeas applicant a full and fair hearing." 372 U.S. at 313.

In the absence of one of the aforementioned circumstances, a separate hearing is not required. In his petition for a writ of habeas corpus, the applicant did not allege any of the six standards set forth in *Townsend*. Rather, petitioner sought to raise for a second time all of the issues that he had earlier raised in the state court. A full and factual hearing was held on these issues and a thorough review of them was made by the state court. The findings of the state trial court were then reviewed by the state appellate courts and found to be supported by the facts. As such, the petitioner has alleged no facts which will

entitle him to another evidentiary hearing before the District Court and therefore, the federal court is merely charged with the responsibility to review the state court's finding and if it is supported by the record, to affirm it.

Furthermore, as Judge Newcomber properly concluded in his memorandum and order at footnote 5, there was no need to hold an evidentiary hearing on the motive behind the extradition because as was noted above, motive may not be inquired into on habeas corpus review. Judge Newcomber observed:

> "Petitioner has alleged that the motive of the New Jersey executive in indicting him and seeking his extradition was not to obtain his conviction, but to secure him as a witness in a criminal investigation. The issue was not raised below, but it would nevertheless be improper for us to consider this contention since a Court on Habeas Corpus may not inquire into the motive behind the extradition demand. *United States vs. Superintendent of County Prisons*, 111 F.2d 409 (3rd Cir. 1940). Furthermore, the issue of improper motive had been raised by appellant in argument before the Superior Court of Pennsylvania and in his Petition for Allowance of Appeal to the Supreme Court of Pennsylvania and was rejected by both courts as being without foundation."

The issues raised by the petitioner are not novel. They fall squarely under the precedents which have been handed down on numerous occasions by state and federal courts on the question of extradition.

C. The District Court did not err in denying the petitioner's motion for discovery where a review is merely limited to a review of the state court record.

The Commonwealth does not contend that discovery is not available in certain instances in the federal court.

However, where as here. the District Court was limited to merely reviewing the state court record in response to the writ of habeas corpus, there was no need for discovery, and therefore, the motion was properly denied.

D. Proof that the petitioner was in the demanding state at various times "between, on or about the 30th day of April and on or about the 17th day of February, 1971—the date specified in the indictments against the petitioner—established that the petitioner was "present in the demanding state at the time of the commission of the alleged crimes" and as required by the statute, was also a fugitive.

The State of New Jersey is seeking extradition of the petitioner pursuant to the provisions of the Uniform Extradition Act, the Act of July 8, 1941, P.L. 288, §1, et seq., 19 P.S. 191.1, et seq. The Governor of Pennsylvania has issued a warrant of arrest as required by §7 of the Act following his receipt of a demand from the Governor of New Jersey that was duly executed and sealed by the Statute of New Jersey as required by §3 of the Act. The petitioner then petitioned the Court of Common Pleas for a writ of habeas corpus which was issued by the court under the provisions of §10 of the Act. Several hearings were held before the Honorable Isaac S. Garb and on January 3, 1974, discharged the writ and ordered the extradition of the petitioner to New Jersey.

The courts of an asylum state will order extradition only if all four requirements of the statute are met: (1) The subject of the extradition is charged with a crime in the demanding state; (2) the subject of the extradition is a fugitive from the demanding state; (3) the subject of the extradition was present in the demanding state at the time of the commission of the crime (subject to the exception found in §6); (4) the requisition papers are in order. *Commonwealth ex rel. Devault v. Kovach,* 439

Pa. 96 (1970); *Commonwealth ex rel. Coades v. Gable*, 437 Pa. 553 (1970); *Commonwealth ex rel. Flood v. Pizzo*, 434 Pa. 208 (1969); *Commonwealth ex rel. Kelly v. Santo*, 436 Pa. 204 (1970).

The petitioner concedes that an indictment has been returned by the Grand Jury of the State of New Jersey charging him in three counts with the crimes of using a false oath, attempting to obtain a thing of value by means of false pretenses and uttering a forged document. He also admits that he is the person named in the indictment. Therefore, he concedes the first requirement of extradition, *i.e.*, that he is a fugitive from the demand state as that term is defined in *Commonwealth ex rel. Devault v. Kovach, supra.*

The petitioner, however, contends that he was not present in the demanding state at the time of the alleged crimes, as that phrase is defined in §§3 and/or 6 of the Act.

The extradition warrant is *prima facie* evidence of the existence of every fact which the executive authority was obliged to determine before issuing it. The burden was upon the petitioner to come forward with evidence to overcome the *prima facie* case of the validity of the warrant upon its introduction. *Taylor v. Superintendent, Philadelphia County Prison, supra.* The signed and sealed demand of the Governor of New Jersey, together with a certified copy of the indictment and a signed and sealed warrant for the petitioner's request signed by the Governor of Pennsylvania, were offered into evidence and received without objection. The demand from the Governor of the State of New Jersey recites that the petitioner was present in the State of New Jersey at the time of the commission of the alleged crime and since the petitioner offered no evidence to overcome the allegation, it must stand. Furthermore, the evidence presented at the hearings on this extradition support this fact.

The petitioner contends that the Commonwealth had the burden of proving that the appellant was present at

the time and place in the demanding state where "an alleged act in furtherance of the crime took place". (Petitioner's Brief, p. 13). However, there is nothing in the Act nor in the court decisions interpreting the Act which requires such proof. First, an examination of §3 reveals that the presence requirement is simply "that the accused was present in the demanding state at the time of the commission of the alleged crime". There is no requirement that the defendant be in a particular location in the state where the crime is alleged to have occurred, but merely that he was within the boundaries of the state. The evidence presented at the hearings, all submitted by stipulation, demonstrated that the petitioner was present in the State of New Jersey between July 1, 1970 and February 16, 1971, on 23 distinct and separate dates.

The petitioner argues that an indictment charging that a crime occurred between two separate days must fail because it is a "subterfuge, to cover petitioner's casual business trips to New Jersey." In order for the court to examine this allegation, however, the court would be required to make findings regarding the validity of the underlying charges against the petitioner in New Jersey. The District Court properly refused to make such findings. The courts of the asylum state may not inquire into the merits of the charges involved. Section 20 provides as follows:

> "The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor, or in any proceeding after the demand for extradition accompanied by a charge of a crime in legal form as above-provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime."

As has already been noted, the petitioner admits that he is the same person as the person charged with the crime.

In *Commonwealth ex rel. Coades v. Gable, supra,* the relator contended that there was not sufficient evidence to identify him as being the perpetrator of the alleged crime. The Supreme Court of Pennsylvania upheld the trial court which held that such evidence was irrelevant. The Pennsylvania Court concluded that it was not proper for the courts of the Commonwealth to examine the guilt or innocence of the person charged with a crime, but were merely required to determine that the person sought to be extradited was the same person as the person charged.

Judge Garb therefore properly concluded when he denied the writ filed in the state court:

> "We know of no case which distinguishes between a bill of indictment charging a crime on one specific date or one charging a continuing crime over a period of time. In either case, our sole inquiry in this regard is whether or not the relator is alleged to have been in a demanding state at the time of the commission of the alleged crime and prima facie validity must be afforded to that allegation; and if this fact is contested then a determination of whether the evidence presented at the habeas corpus hearing is sufficient to sustain that allegation. The evidence presented clearly shows that the relator was in the State of New Jersey on a number of occasions during the period of time during which the indictment alleges the crime was committed and this evidence is uncontradicted by relator. What his activities were on those dates, or what if any relationship those activities might have had to the alleged crime are substantive matters going to the charges contained in the bill of indictment themselves and are matters beyond our review at this time."

CONCLUSION

For the reasons stated above, the Commonwealth requests your Honorable Court to dismiss this petition for a writ of certiorari.

Respectfully submitted,

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